

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 84 of 1998

to

FIRST APPEAL No 227 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

MANKABHAI TEJABHAI PATEL DECD THRO'HEIRS JASUBHAI M PATEL

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Appearance:

MR SJ DAVE, AGP for Appellants

MR BG PATEL, for Respondents

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CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE C.K.BUCH

Date of decision: 08/05/98

ORAL COMMON JUDGEMENT ( CORAM : Y.B.BHATT, J )

Heard the ld. counsel for the respective parties. Appeals admitted. Mr. BG Patel appearing by

caveat, also appears in appeals and states that he waives service of notice of appeal on behalf of the respondents - original claimants in these appeals.

2. On the joint request by the ld. counsel for the respective parties, these appeals are taken up for final hearing today.

3. These are appeals filed by the appellant State of Gujarat under Sec.54 of the Land Acq. Act read with Sec.96 CP Code, challenging the common judgment and awards passed by the Reference Court under Sec.18 of the said Act.

4. We have heard the ld. counsel for the respective parties on the merits of the case, and we have applied our minds to the impugned judgment and awards as also to such evidence as has been referred to us for our consideration by the respective ld. counsel.

5. As a result of the hearing and discussion, a broad consensus has been arrived at between the ld. counsel.

5.1 We may only indicate that such a consensus has been arrived at on account of the fact that this very Bench has decided a large number of appeals both by the State as also by the original landholders arising from the land acquisition for the purpose of this very same project namely Dharoi Irrigation Project, and dealing with the acquisitions from many proximate and contiguous villages, acquired under various notifications issued under Sec.4 of the said Act. This Bench has therefore available with it a large number of decisions, at least by way of a comparative guide. Such comparison is possible also because it is common ground on both sides that such acquisitions were from the villages situated within the radius of 10 to 12 kms. and that fertility, nature and quality of the land, agricultural yield etc. were more or less equal in all said villages. Since this Bench had decided as aforesaid, the market value in respect of a large number acquisitions, it was relatively easier for the respective ld. counsel to arrive at a consensus as regards the facts of the present case.

6. As a result of the hearing and discussion and also as a result of the consensus, we record certain concessions and admissions made by the ld. counsel for the respondents- orig. landholders.

6.1 As regards the compensation awarded by the

Reference Court for the wells in question, and associated pipelines (including increase granted in respect of pipelines etc.), it is well-settled principle laid down by the Supreme Court in atleast two decisions, that when agricultural land is valued as irrigated land and the higher valuation is assigned to such land on account of the fact that the source of irrigation is located upon the very same land, separate and independent compensation cannot be awarded for the wells, pipelines etc. This principle is laid down by the Supreme Court in the case of State of Bihar, reported at (1996)10 SCC Page 635, following another earlier decision of the Supreme Court in the case of O. Janardana Reddy, reported at (1994)6 SCC P. 456. In view of this clear proposition of law, ld. counsel for the respondents- original landholders concedes that the compensation granted in respect of wells, pipelines etc. (including the increase in respect of such pipelines) may be disallowed. We hold and direct accordingly.

6.2 The next contention raised by the ld. counsel for the appellant State is to the effect that the compensation awarded by the Reference Court in respect of fruit trees at the rate of Rs. 500/ each, for non-fruit bearing trees at the rate of Rs. 300/ each and for Kalami trees at the rate of Rs. 100/ each is excessive and not justified by the state of evidence on record. In this context, without going into a detailed discussion of evidence on record, ld. counsel for the respondent conceded that the value in respect of all the three types of trees may be reduced by one half. Ld. counsel for the appellant agrees that this is a fair concession and that no further reduction would be justifiable on the facts and evidence on record. We therefore hold and direct accordingly, that fruit bearing trees shall be valued at Rs. 250/ each, non-fruit bearing trees shall be valued at Rs. 150/ each and Kalami trees shall be valued at Rs. 50/ each. We hold and direct accordingly.

7. So far as the determination of the market value of the acquired land is concerned, after further hearing and discussion on this aspect, the ld. counsel for the respective original claimants conceded that the valuation of the market value as determined by the Reference Court may be reduced as under :-

7.1 For Kharaba land, value be reduced from Rs. 20,000/ per Hectare to Rs. 10,000/ per Hectare.

7.2 For irrigated and non-irrigated land which have been valued separately by the Reference Court at

Rs.26,000/ and Rs. 24,000/ respectively per Hectare, be valued on a flat rate at Rs. 23,000/ per Hectare i.e. Rs. 230/ per Are.

Ld. counsel for the appellant State also conceded that this concession made by the ld. counsel for the respondents orig. claimants is a fair and reasonable one and that no further reduction would be justified or could be sustained looking to the facts and evidence on record. We therefore determine the market value of the acquired land at Rs. 23,000/ per Hectare (Rs. 230/ per Are) on a flat rate both for irrigated land and non-irrigated land and determine the market value of Kharaba land at Rs. 10,000/ per Hectare ( Rs. 100/ per Are). We hold and direct accordingly.

8. No other contention has been raised by either side.

9. These appeals are therefore partly allowed with no orders as to costs. Decree accordingly.

10. The appellant State is directed to deposit the necessary amount under the present decree separately in each Land Ref.Case before the Reference Court within a period of three months from drawing up of the present decree.

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